

Auction
U.S. Government Property

PENFIELD REEF LIGHTHOUSE
Fairfield, CT



Photo courtesy of Jeremy D'Entremont

Online Auction
Opening Date June 12, 2023
IFB No. BOSTN123003001

Auction Summary

Sale Type: Online Auction
Start Date: Monday June 12, 2023, 11:00 AM CDT
End Date: To Be Determined
Starting Bid: \$50,000
Registration Deposit: \$10,000
Bid Increment: See Website

Property Information and Auction Questions:

Sonia Allon-Singh
Office of Real Property Utilization & Disposal
New England Region
617-306-8615
Sonia.allon-singh@gsa.gov

Send Bidder Registration Form and Registration Deposit via:

Mail: General Services Administration
Real Property Utilization and Disposal (1PZ)
10 Causeway Street, Suite 1100
Boston, Massachusetts 02222
Attn: Lawanda Maryland

Email: realestate.sales@gsa.gov

GSA's Property Disposal Web Page: <http://propertydisposal.gsa.gov>

Online Auction

Go to RealEstateSales.gov for the most up-to-date information on the sale of the Property

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PROPERTY DESCRIPTION

ADDRESS:

The Penfield Reef Lighthouse (the Property) marks a submerged reef which extends southeastwardly from Fairfield Beach near Town of Fairfield, Fairfield County, Connecticut, into Long Island Sound. It is located approximately one (1) mile from the entrance of Black Rock Harbor in the City of Bridgeport.

It is accessible by boat only.

The Property is located at Latitude: 41.117112 Longitude: -73.222058

DESCRIPTION:

The Property consists of a 51-foot-tall octagonal light structure attached to a square two-story keeper's quarters building, 28'3" x 28'3" (1,568 sf), which is constructed of granite and timber frames (the Property). The Property was built in the Second Empire Style and was completed in 1874. It is listed on the National Register of Historic Places on May 12, 1990, reference #89001473.

In 2015, the exterior of the Property was restored to a great extent to its 19th-century appearance.

Renovations included:

- new roof
- new cornice and built-in gutter
- new aluminum clad hurricane-resistant windows
- new stainless steel exterior doors
- new stainless steel vent panels
- new pre-coated fiber cement siding and trim at the tower
- new lead-coated copper sheet metal at the lantern deck and exterior lantern walls
- new stainless-steel railings
- new stainless steel access ladder
- granite caisson (cylindrical base) re-pointed
- stone entrance stair repairs
- roof deck repairs
- stone repairs and re-pointing
- painting
- exposed & loose lead-based paint removed (not abated for residential)
- exposed asbestos-containing materials removed (not fully abated)

The lighthouse is set on concrete filled foundation, 108' in diameter, surrounded by rip-rap rocks. There is a pier measuring approximately 17'6" x 16'5". There is a boat landing which projects from the north side and a metal ladder to reach two (2) flights of steps which connect the pier landing with the main deck above and rip-rap below.

The Property is an active Federal Aid to Navigation (ATON) with two lighting systems, primary and emergency. The primary light is located inside the lighthouse; it is a VRB-25 that flashes red every 6 seconds. The lenses rotate at all times, even when the light is turned off. The emergency light is a 300MM lantern mounted externally that is designed to turn on automatically if the primary light becomes inoperable; it also flashes red every 6 seconds.

The ATON also includes three (3) FA-232 horns, two (2) of them operate when fog is present, while the third is for emergencies if the other two horns are inoperable. A fog detector activates the sound signal in times of low visibility. The range of the sound signal is one (1) nautical mile.

LEGAL DESCRIPTION:

Situated at Penfield Reef at the end of a shoal which extends southeasterly from Fairfield Beach on the south side of Black Rock Harbor, in Western Long Island Sound, Fairfield County, Connecticut (Coordinates: 41° 07' 02" N -73° 13' 22" W) and is more fully described as follows:

The 51-foot white octagonal wood framed light tower with a watch room, lantern gallery, and conical roof is built into a 28-foot 3-inch square two story granite and timber keeper's quarters topped with a mansard roof with Second Empire style detailing. The circular granite cut stone caisson foundation is 108-feet in diameter, filled with riprap and concrete, houses two cisterns and sits on submerged lands with a protective riprap breakwater. It is an active offshore aid to navigation (#21290) built in 1874 to mark Penfield Reef.

A concrete pier landing, 17-feet 6-inch long by 16-feet 5-inch wide, projects from the north of the foundation and it is equipped with two flights of steps and formerly included a metal crane.

UTILITIES & SERVICE PROVIDERS:

Procurement of utility service shall be the responsibility of the Purchaser as of the date of conveyance. Bidders are urged to contact the appropriate utility providers for information on the availability of utilities.

Solar panels provide electricity along with 10 batteries for the ATON, including but not limited to the lanterns and horns. Solar panels and batteries are owned by the US Coast Guard and are not being offered for sale or use.

SUBMERGED LANDS LEASE REQUIREMENT

The Property is located on submerged lands. Pursuant to the provisions of the National Historic Lighthouse Preservation Act of 2000 (NHLPA) (54 USC §305101-305106) (formerly at 16 USC 470w-7), an amendment to the National Historic Preservation Act of 1966, no submerged land can be conveyed in the quitclaim deed for the Property.

Prior to the Government conveying title to the Property, the Purchaser is required to obtain a lease from the State of Connecticut to occupy the submerged lands. (See Section "Closing: Requirement for State of Connecticut Lease, Tender of Payment and Delivery of Instrument of Conveyance" at page 10).

A sample of a lease is attached to this IFB (Attachment A). The lease will have the following requirements regarding use and access of the property:

"The Premises shall be only used for residential, park, recreational, educational, cultural, or historic preservation purposes and as the foundation for the lighthouse constructed thereon (the "Lighthouse") consistent with the goals and policies of Section 22a-92 of the Connecticut General Statutes and the stipulations herein, provided that any residential use will be contingent on securing written State and local approval of the any wastewater and sanitary disposal mechanism in accordance with local rules and historic systems and the historic degree of residential use. State approval may be withheld in the State's sole and absolute discretion. No commercial uses will be permitted."

Please refer to the Connecticut Lease Template (attachment A) for additional terms and conditions. The State of Connecticut Department of Energy and Environmental Protection (CT DEEP) notes that it is a

form lease **not subject to modification.**

ZONING

Bidders are encouraged to contact the Town of Fairfield, Town Plan and Zoning Department, for questions regarding any potential permits or zoning:

Emmeline Harrigan
Assistant Planning Director
725 Old Post Road
Fairfield, CT 06824
eharrigan@fairfieldct.gov

GENERAL TERMS OF SALE

DEFINITIONS

The terms described in paragraphs a) through aa) below shall have the meanings set forth therein.

a) ACCEPTED BID

The term "Accepted Bid" refers to a Bid that the Government elects to accept.

b) ADDITIONAL DEPOSIT

The term "Additional Deposit" is defined in the Additional Deposit and Transaction Closing Section of the Instructions to Bidders portion of this IFB.

c) AGREEMENT OF SALE

The "Agreement of Sale" is defined in the Agreement of Sale Section of the General Terms of Sale portion of this IFB.

d) AS-IS

The term "As-Is" means that the Government is selling, and the Bidders are offering to purchase the Property in whatever condition it presently exists, and that the Purchaser will accept the Property "with all faults," whether or not they could be ascertained by an inspection of the Property or review of any due diligence material available.

e) AUCTION

The term "Auction" is defined in the Type of Sale Section of the Instructions to Bidders portion of this IFB.

f) BACKUP BIDDER

The term "Backup Bidder" refers to the Bidder whose Bid is determined by the Government to be the second most advantageous Bid, as determined by the Government.

g) BID

A "Bid" is an offer to purchase the Property subject to the terms and conditions of this IFB for an amount of money designated by the Bidder.

h) BID INCREMENT

The "Bid Increment" is a specified amount of money posted on the Website.

i) BIDDER(S)

The term "Bidder" or "Bidders" as used herein refers to the offeror or offerors for the purchase of the Property.

j) BIDDER REGISTRATION FORM

The term "Bidder Registration Form" refers to the form titled "Bidder Registration for Purchase of Government Property."

k) BUSINESS DAY

The term "business day" means all calendar days except Saturdays, Sundays, and public holidays pursuant to 5 U.S.C. § 6103 subsections (a) & (b)(1).

l) CLOSING DATE

The "Closing Date" is defined in the Tender of Payment and Delivery of Instrument of Conveyance Section of the General Terms of Sale portion of this IFB.

m) EIN

The term "EIN" refers to an entity's Employer Identification Number.

n) GOVERNMENT

The term "Government" refers to the United States of America and is used interchangeably with "Grantor."

o) GSA

The term "GSA" refers to the United States General Services Administration, a federal agency.

p) HIGH BID

The term "High Bid" refers to the Bid offering the highest amount of money. The Website identifies the High Bid as either the "Current Winning Bid" or the "Current Bid".

q) INACTIVITY PERIOD

The "Inactivity Period" is defined in the Auction Close Section of the Instructions to Bidders portion of this IFB.

r) INITIALLY ANTICIPATED CLOSE OF AUCTION

The "Initially Anticipated Close of Auction" is defined in the Auction Close Section of the Instructions to Bidders portion of this IFB.

s) INVITATION FOR BIDS

The terms "Invitation for Bids" and "IFB" refer to this document and the following items that are a part hereof: the Property Description; General Terms of Sale; Specific Terms of Sale; Instructions to Bidders; Bidder Registration Form for Purchase of Government Property. Any exhibits and/or forms that are attached hereto are hereby incorporated herein by reference. Should the aforementioned documents be modified or supplemented by any addenda or amendments issued by the Government prior to the conclusion of the Auction, those addenda and amendments shall be part of the IFB.

t) PROPERTY

The term "Property" refers to the property or properties described in the Property Description of this IFB.

u) PURCHASE PRICE

The "Purchase Price" is the amount of money offered in the Accepted Bid.

v) PURCHASER

The term "Purchaser" refers to the Bidder of the Accepted Bid and is used interchangeably with "Grantee."

w) REGISTRATION DEPOSIT

The term "Registration Deposit" is defined in the Bidder Registration and Deposit of the Instructions to Bidders portion of this IFB.

x) SSN

The term "SSN" refers to a Social Security Number.

y) TIN

The term "TIN" refers to a Tax Identification Number.

z) WHERE-IS

The term "Where-Is" means that the Government is selling, and the Bidders are offering to purchase the Property in whatever location it presently exists.

aa) WEBSITE

The term "Website" refers to the GSA Auctions® website, GSAAuctions.gov, which has been developed to allow the general public the opportunity to bid electronically on a wide array of Federal assets, including real property. Auctions for real property are offered as a separate asset category at GSA Auctions and can be viewed at RealEstateSales.gov.

2. DESCRIPTION PROVIDED IN IFB

The description of the Property and all other information provided with respect to the Property are based on information available to the GSA Office of Real Property Utilization and Disposal and are believed to be correct. Any error or omission, including but not limited to, the omission of any information available to the agency having custody over the Property and/or any other Federal agency, shall NOT constitute grounds or reason for nonperformance of the Agreement of Sale, or claim by Purchaser for allowance, refund, or deduction from the Purchase Price.

3. INSPECTION

The Property will be made available for inspection for registered bidders by **appointment only**. The Website will be updated to indicate the dates and times which the Property will be open. No one will be allowed access to the Property without the presence of a GSA employee or designee. Bidders are invited, urged, and cautioned to inspect the Property prior to submitting a Bid. The failure of any Bidder to inspect, or to be fully informed as to the condition of all or any portion of the Property, will not constitute grounds for any claim or demand for adjustment or withdrawal of a Bid after the start of the Auction.

4. AGREEMENT OF SALE

This IFB and the Accepted Bid shall constitute an agreement for the sale of the Property by and between the Purchaser and the Government (the "Agreement of Sale"). The Agreement of Sale shall constitute the entire agreement and understanding between the Purchaser and the Government, and no oral statements or representations made by, for, or on behalf of either party shall be a part of the Agreement of Sale. The Agreement of Sale shall not be amended, modified, revised, or otherwise altered except by a written instrument signed by both

the Purchaser and the Government. In addition, the Purchaser shall not transfer or assign the Agreement of Sale or any or all of the Purchaser's interest therein without the prior, express written consent of the Government, which consent may be withheld by the Government in its sole and absolute discretion. Any assignment made without such consent shall be void.

5. CONDITION OF PROPERTY

The Government is offering the Property for sale "AS IS" AND "WHERE IS", disclaims any and all express or implied warranties and specifically makes no warranties of title, habitability, merchantability, suitability, and fitness for any purpose. This includes, but is not limited to, representations or warranties concerning the title, zoning, development potential, character, condition, size, quantity, quality, and state of repair of the Property. Unless otherwise expressly provided in this IFB, the Government makes no agreement or promise to alter, improve, adapt, or repair the Property. Each Bidder shall rely solely on its own due diligence investigation in determining to place a Bid. The Purchaser acknowledges that there will be no claims or any allowances or deductions upon grounds that the Property is not in condition or fit to be used for any particular purpose. Purchaser is relying solely and wholly on Purchaser's own examination of the Property, is fully satisfied with the Property, and accepts any liabilities or costs arising in connection with the condition of the Property, including, but not limited to any costs or liabilities pertaining to any environmental condition on the Property."

6. EASEMENTS, ENCROACHMENTS AND RESERVATIONS

The Property will be sold subject to: (A) any and all covenants, reservations, easements, restrictions, encroachments, and rights, recorded or unrecorded, in favor of third parties including, without limitation, any and all such covenants, reservations, easements, restrictions, encroachments, and rights for highways, streets, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, public roads, railroads and other rights-of-way; and (B) any easements, reservations, rights and covenants reserved by the Government herein.

7. ZONING

Verification of the present zoning and determination of permitted uses, along with compliance of the Property for any proposed future use, shall be the responsibility of the Bidder. The Government makes no representation in regard to zoning matters. Any inaccuracies or changes in the zoning information shall NOT be cause for adjustment or rescission of any Agreement of Sale. For more information contact Emmeline Harrigan at the Town of Fairfield, Town Planning and Zoning Department, eharrigan@fairfieldct.gov

8. RISK OF LOSS

As of the date of conveyance of the Property, the Purchaser shall assume all obligations and liabilities of ownership to the Property including, without limitation, sole responsibility for the care and handling of the Property and all loss and/or damage related to the same (including, without limitation, the buildings and/or improvements located thereon), and no claim for any allowance or deduction upon such grounds will be considered after the close of the Auction. In the event of any damage or loss to the Property prior to conveyance of the Property to the Purchaser, the Government shall have the right to terminate the Agreement of Sale. In the event of such termination, the Government will return to the Purchaser all funds (without interest) previously delivered by the Purchaser to the Government, and thereafter the Government shall have no further liability to the Purchaser.

9. TAXES, ASSESSMENTS AND OTHER COSTS

As of the date of conveyance of the Property, the Purchaser shall assume responsibility for all general and special real and personal property taxes or other assessments. The Government is not aware of any past due taxes or payments in lieu of taxes which are owed by the Government for the Property.

10. REVOCATION OF BID AND DEFAULT

In the event of revocation of a Bid prior to acceptance of an Accepted Bid, or in the event of revocation of a Bid

after acceptance of an Accepted Bid, or in the event of any default by the Purchaser in the performance of the Agreement of Sale, or in the event of failure by the Purchaser to consummate the transactions contemplated by the Agreement of Sale, the Government shall have the right, in its sole discretion: (A) to require the forfeit of the Registration Deposit and the Additional Deposit (if applicable) to the Government, following which, the Bidder or Purchaser, as the case may be, shall be relieved from further liability and obligations; or (B) to avail itself of any and all legal or equitable rights which it may have under the law.

11. GOVERNMENT LIABILITY

If the Government accepts a Bid and (1) the Government fails for any reason to perform its obligations as set forth herein; or (2) title does not transfer or vest in the Purchaser for any reason, although Purchaser is ready, willing, and able to close; or (3) any other contractual claim or cause of action hereafter accrues in favor of the Purchaser under the terms of this IFB, then, unless otherwise expressly provided in this IFB, the extent of the Government's liability to the Purchaser shall be strictly limited to all amounts of money the Purchaser has paid to the Government (without interest). Upon the refund to the Purchaser of such money (without interest), the Agreement of Sale shall be deemed terminated and of no further force and effect and the Government shall have no further liability to the Purchaser.

12. TITLE EVIDENCE

Any Bidder, at its sole cost and expense, may obtain any title evidence relating to the Property. It is understood and agreed that the Government is not obligated to pay for any expense incurred in connection with title matters or survey of the Property. The Government will, however, cooperate with the Purchaser or his or her authorized agent in this transaction, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the Property, as GSA may have available.

13. TITLE

If a Bid is accepted, a quitclaim deed or a deed without warranty in conformity with local law and practice will convey the Government's interest. The Government does not pay for or provide title insurance.

14. COVENANT AGAINST CONTINGENT FEES

The Purchaser warrants that he or she has not employed or retained any person or agency that is not a "bona fide established commercial agency" (described below) to solicit or secure acceptance of a Bid upon any agreement or understanding for commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right, in its sole discretion, to terminate the Agreement of Sale without liability and/or, in addition to any relief available to the Government pursuant to the "Revocation of Bid and Default" Section above, to recover from the Purchaser an amount equal to the amount of such commission, percentage, brokerage, or contingent fee. A "bona fide established commercial agency" has been construed to include a licensed real estate broker engaged in the business generally. In the event the Purchaser has employed or retained a bona fide established commercial agency in connection with this IFB, the Purchaser warrants that any fee or commission due to the same shall be borne solely by the Purchaser.

15. CLOSING: REQUIREMENT FOR STATE OF CONNECTICUT LEASE, TENDER OF PAYMENT AND DELIVERY OF INSTRUMENT CONVEYANCE

After the auction closes and the Government accepts the High Bid, the Purchaser is required to obtain the State of Connecticut's Lease (the "Lease") to occupy the submerged lands. The Government will not convey title to the Property until the Purchaser obtains the Lease. Within fifteen (15) business days of acceptance of the Accepted Bid, the Purchaser agrees to contact the State of Connecticut Department of Energy and Environmental Protection (CT DEEP) to initiate the process to obtain the Lease. Failure to initiate the process timely may result in a default and forfeiture of the Registration Deposit and Additional Deposit. Within sixty (60) days of contact to the CT DEEP, the purchaser shall provide at least one draft proposal of use to the CT DEEP.

16. TENDER OF PAYMENT AND DELIVERY OF INSTRUMENT OF CONVEYANCE

Prior to closing, the Purchaser must open an escrow account with an independent, unaffiliated escrow company ("Escrow Agent") to handle aspects of the closing including recording of deed, disposition of proceeds and any related matters. All closing costs, including escrow fees and document handling expenses, shall be borne solely by the Purchaser. Prior to the closing, the Government will provide escrow instructions to the Escrow Agent.

The closing date of the sale (the "Closing Date") will be set by the Government and will be no later than sixty (60) calendar days after acceptance of the Accepted Bid. Notwithstanding the prior sentence, Government reserves the right to extend the Closing Date for a reasonable amount of time.

By the Closing Date, the Purchaser shall tender to the Escrow Agent the balance of the Purchase Price in the form of a cashier's check, certified check, or electronic wire transfer. Upon confirmation that the Purchaser's funds have been received by the Escrow Agent and are to the satisfaction of the same, the Government will deliver to the Escrow Agent the instrument, or instruments, of conveyance. Possession of the Property will be assumed by the Purchaser as of the date of conveyance of the Property.

17. DELAYED CLOSING AND PURCHASER'S REQUEST TO DELAY

Any change to the established closing date is subject to the written approval by the Government. The Government reserves the right to refuse a request for extension of closing. However, if the Government grants an extension, the Purchaser may be required to pay interest on the outstanding balance of the purchase price if the closing of the sale is delayed, and the delay is caused, directly or indirectly, by the Purchaser's action or inaction and not by any action on the part of the Government. The interest rate shall be computed, as of the date of acceptance of the Accepted Bid, based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2% rounded to the nearest one-eighth percent (1/8%). The Government reserves the right to impose additional terms and conditions on any such grant.

18. CLOSING COSTS, DOCUMENTARY STAMPS AND COST OF RECORDING

All closing costs, including escrow and financing fees, shall be borne solely by the Purchaser. The Purchaser shall pay all taxes and fees imposed on this transaction and shall obtain, at Purchaser's own expense, and affix to all instruments of conveyance and security documents, such revenue and documentary stamps as may be required by Federal, state, and local law.

All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the Purchaser's expense.

A conformed copy of the recorded quitclaim deed shall be provided by the Purchaser to GSA, within five (5) business days after recording, at the following address:

U.S. General Services Administration
Attn: Sonia Allon-Singh
Office of Real Property Utilization and Disposal (1PZ)
Thomas P. O'Neill Federal Building
10 Causeway Street, Suite 1100
Boston, Massachusetts 02222

19. OFFICIALS NOT TO BENEFIT

No member or delegate to the Congress or resident commissioner shall be admitted to any share or part of the Agreement of Sale or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the Agreement of Sale if made with a corporation for its general benefit. GSA employees are prohibited from bidding on the Property.

20. COMPLIANCE WITH SECTION 889 PART B

By signature of the Bidder Registration and Bid Form, bidders hereby certify that their entity is in compliance with Section 889, Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment of the Fiscal Year 2019 National Defense Authorization Act (Pub. L. 115- 232). The bidder represents that it does not use covered telecommunications equipment or services, or use any equipment, system or service that uses covered telecommunications equipment or services. The statute prohibits contracting with an entity that uses certain telecommunications equipment or services produced by the below entities, companies, affiliates, or subsidiaries:

- a. Huawei Technologies Company
- b. Corporation
- c. Hytera Communications Corporation
- d. Hangzhou Hikvision Digital Technology Company
- e. Dahua Technology Company

The prohibition of use of these telecommunications equipment or services applies regardless of whether or not that usage is related to the terms and conditions of this IFB, and the certification extends until closing of the transaction as specified herein.

21. EXCLUDED PARTIES

GSA determines bidders' eligibility for participation in the sale described in this IFB both upon registration and at prospective award. GSA validates prospective bidders' eligibility via the System for Award Management (SAM) Exclusions Extract (available at www.sam.gov > SAM Home > Data Access > Exclusion Interfaces) and are required to provide their Social Security Number or Tax Identification Number on the Bid Form. Accordingly, bidders are required to provide their Social Security Number or Tax Identification Number on the Bid Form.

22. ANTITRUST LAWS

The Agreement of Sale may be transmitted to the Attorney General of the United States for advice as to whether the sale would tend to create or maintain a situation inconsistent with anti-trust laws. The Government may rescind the acceptance of any Bid if unfavorable advice is received from said Attorney General, without liability on the part of the Government other than to return any and all deposits held by the Government without interest.

SPECIFIC TERMS OF SALE

Clauses pertaining to the following environmental matters will appear in the Deed to the Property.

NOTICE OF PRESENCE OF ASBESTOS CONTAINING MATERIALS ("ACM")

- a) Bidders are warned that the Property contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers, and which can result in disability or death.
- b) Bidders are invited, urged, and cautioned to inspect the Property to be sold prior to submitting a bid. More particularly, bidders are invited, urged, and cautioned to inspect the Property as to its asbestos content and condition, and any hazardous or environmental conditions relating thereto. The Government will assist bidders in obtaining any authorization(s) which may be required in order to carry out any such

inspection(s). Bidders shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the Property including, without limitation, any asbestos hazards, or concerns.

- c) No warranties either express or implied are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.
- d) The description of the Property set forth in this IFB and any other information provided therein with respect to said Property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the agency having custody over the Property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.
- e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, licensees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property which is the subject of this sale, whether the Grantee, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.
- f) The Bidder further agrees that in its use and occupancy of the Property it will comply with all Federal, state, and local laws relating to asbestos.

NOTICE OF PRESENCE OF LEAD-BASED PAINT (LBP)

The Purchaser of any interest in real property on which a building was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to converting the Property to a residential dwelling.

NOTICE OF PRESENCE OF RADON

The Grantee is notified that the United States has determined that a radon hazard potentially exists in subject building(s) on the Property and from the Property itself due to the Property's location in a Radon Zone Level 1. The Government has not performed any studies pertaining to Radon at the Property, and has no actual knowledge that a Radon Hazard exists. Radon is a naturally occurring radioactive gas emanating from the ground that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time, and which falls within the CERCLA "Limitations on Response" standards at 42 U.S.C. 9604 (a)(3). Additional information regarding radon and radon testing may be obtained from the EPA and county and state

health units.

Information provided to the Grantee with respect to the Property is based on the best information available to the Grantor and is believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, will not constitute grounds for liability for damages by the Government for personal injury, illness, disability, or death, to the Grantee, its successors, assigns, employees, invitees, or any other person subject to the Grantee's control or direction.

AIDS TO NAVIGATION (ATON)

The Department of Homeland Security United States Coast Guard("USCG") is the Federal agency responsible for operating and maintaining any Federal aid to navigation("ATON") or associated equipment as that term is defined in 54 U.S.C. §305101(3). The Federal ATON located at the Property in operation as of this date include but are not limited to the optic, the fog signal, a solar array, and batteries, and shall remain the personal property of the USCG and shall continue to be operated and maintained by the USCG for as long as needed for navigational purposes at the Property.

The Grantee acknowledges and agrees that it is accepting title to the Property subject to the rights of the USCG, or its successor entity to install, operate, and maintain active ATON. In furtherance of its right to continue such function, the USCG hereby expressly reserves perpetual and assignable the following rights:

1. The unrestricted right of the United States to keep, locate, service, maintain, operate, install, repair and replace ATON and any and all associated equipment on the Property;
2. The unrestricted right to relocate or add any ATON and any and all associated equipment, or make changes on any portion of the Property as may be necessary for navigational purposes or in the service of any regional ATON;
3. A right of access to, over and across the Property in favor of the United States for the purpose of servicing, maintaining, locating, operating and repairing and replacing the navigational aids and any and all associated equipment on the Property. The United States shall have the right to enter the Property at any time for the purpose of maintaining the navigational aids and performing the other functions contemplated herein. Upon completion of the servicing, maintaining, operating, repairing and replacing of navigational aids and any associated equipment, the Property shall, at the sole cost of the United States or its successor entity, subject to the availability of appropriated funds, be left as nearly as reasonably possible in the same condition as before any such work began;
4. The right of the United States for the purpose of preserving and maintaining an Arc of Visibility of the beacon as follows: nothing will be constructed, maintained or permitted exceeding 40 feet on a plane emanating from the center of the Property 360 degrees or of a height sufficient to interfere with or obstruct the Arc of Visibility of said Property;
5. The right of the United States to utilize the fog signal horn at any time and in any manner it deems necessary;
6. The Grantee may not interfere with or allow interference in any manner with any navigational aids or associated equipment in use on the Property without express written permission from the USCG.

HISTORIC PRESERVATION COVENANTS

The Property is listed on the National Register of Historic Places reference #89001473. The Grantee, in accepting the Deed, acknowledges and accepts the following conditions and covenants:

1. Grantee shall maintain and preserve the Property in accordance with the recommended approaches in The Secretary of the Interior's Standards for Treatment of Historic Properties, 1995, Standards for Preservation (Technical Preservation Services for Historic Buildings, National Park Service) in order to preserve and enhance the distinctive materials, features and spaces that make the Property eligible for inclusion in the National Register of Historic Places.
2. When rehabilitation is the appropriate treatment, Grantee shall rehabilitate the Property in accordance with the recommended approaches in The Secretary of the Interior's Standards for Treatment of Historic Properties, 1995, Standards for Rehabilitation (Technical Preservation Services for Historic Buildings, National Park Service). Rehabilitation is appropriate when repair and replacement of deteriorated features is necessary or when alteration or additions to the Property are planned.
3. Distinctive materials, features, finishes, construction techniques and examples of craftsmanship that characterize the Property shall be preserved.
4. Plans of proposed rehabilitation, construction, alteration or replacement of distinctive materials, features finished or spaces which would affect the appearance or structural integrity of the Property shall be reviewed and approved by the Connecticut State Historic Preservation Officer ("SHPO") for consistency with The Secretary of the Interior's Standards for Treatment of Historic Properties.
5. The SHPO shall be permitted at all times to inspect the Property in order to ascertain if the above conditions are being observed.
6. The covenants, conditions and restrictions contained herein shall be inserted by the Grantee verbatim or by express reference in any instrument by which it divests itself of interest in the Property or by which it grants any interest in the Property.
7. The failure of the Secretary, the Administrator or the SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such rights or remedy at any other time.
8. The Grantee agrees that the SHPO may at its discretion without prior notice to the Grantee convey and assign all or part of its rights and responsibilities contained herein to a third party.
9. The covenants, conditions and restrictions set forth in this Historic Preservation Covenant shall constitute a binding servitude upon the Property and shall be deemed to run with the land on which the Property is situated. All the covenants, conditions, restrictions, and obligations described are binding upon the Grantee and its heirs, successors, and assigns.

INSTRUCTIONS TO BIDDERS

1. AUCTION START DATE

The Auction opens on Monday June 12, 2023 11:00 AM (Central Time).

2. TYPE OF SALE

The sale of the Property will be conducted through an online auction on the Website (the "Auction").

3. BIDS AND TERMS OF SALE

Bids to purchase must be ALL-CASH. The Purchaser must arrange for its own financing and pay the balance of the Purchase Price in full by the Closing Date. No Government credit terms are available. GSA has no information on the availability of private financing or on the suitability of the Property for financing.

4. STARTING BID

The amount of the starting bid is \$50,000. Such amount does not represent the value of the Property but rather provides a reasonable starting point for the Auction. The Government seeks to obtain fair market value for the Property and reserves the right to reject any and all Bids.

5. BIDDER REGISTRATION AND DEPOSIT

Bidder registration is a multi-step process set forth in the following paragraphs. All steps must be fully completed in the manner described below.

- 1) Complete Online Registration: Bidders must register online at the Website. Once on the Website, click on "Register", establish a username and password, and provide the requested account information. A username and password are used to register online and to place Bids. The password must be between eight and fifteen characters. Each Bidder will be asked to read and agree to the terms and conditions of the Website, which GSA hereby reserves the right to change. Notwithstanding the above, each Bidder understands that the terms and conditions of this IFB shall govern in the event of any conflict between the terms and conditions of the Website and the terms and conditions of this IFB. A Bidder that previously registered on the Website can login using the username and password that such Bidder previously established. It is the Bidder's responsibility to establish its username and password on the Website. In the event a Bidder forgets its username or password, or both, or is locked out from the Website, GSA staff cannot assist in retrieving a lost or forgotten username and/or password.

A Bidder may register on the Website as either an individual or as an entity provided, however, that the Bidder information submitted as a part of the registration on the Website must be the same information provided on the Bidder Registration Form. Any request to change the name of the Purchaser after acceptance of any Bid may be withheld or granted by the Government in its sole and absolute discretion. If an individual wishes to Bid on the Property as both an individual and as the authorized representative of an entity, such Bidder must ensure that the individual and the entity are separately registered and, thereafter, place Bids accordingly.

In accordance with Public Law No. 104-134, Section 31001, the Debt Collection Improvement Act of 1996, the TIN must be provided by anyone conducting business with the Federal Government, from which a debt to the Government may arise. Individuals cannot successfully register to Bid without providing a TIN. A TIN is defined as an individual's SSN or a business entity's EIN. If a Bidder registers as an individual, his or her SSN will be validated with such individual's name and address. If a Bidder registers as an entity, its EIN will be validated with such entity's name and address. The use of an individual's SSN is subject to the Privacy

Act of 1974 (5 U.S.C. Section 552a) and will be collected only to verify the data submitted by the Bidder and for any refund of the Registration Deposit. A credit card validation process will be conducted to prevent potential fraudulent bidding activity and to ensure that Bidders are prepared to accept responsibility for their bidding activity. The credit card information provided as a part of the online registration process is used strictly for validation purposes. The Website does not automatically charge credit cards on file. For more information and assistance with the online registration process, please go to the Website.

- 2) Complete Bidder Registration Form: Bidders must complete and submit the Bidder Registration Form that accompanies this IFB. All information and certifications requested thereon must be provided. Any Bidder Registration Form that fails to furnish all required information or certifications may be summarily rejected. The Bidder Registration Form must be filled out legibly with all erasures, strikeouts and corrections initialed by the person signing the Bidder Registration Form. The Bidder Registration Form must be signed and dated. Additional Bidder Registration Forms are available upon request or Bidders may photocopy and/or print the form that accompanies this IFB.
- 3) Provide Registration Deposit: A deposit in the amount of **\$10,000** the "Registration Deposit") must accompany a Bidder's Bidder Registration Form. Registration Deposits must be provided in the form of a cashier's check, certified check or credit card (Visa, MasterCard, Discover or American Express). Notwithstanding the prior sentence, if the Registration Deposit for the Property is greater than **\$49,999.99**, a credit card cannot be used to provide the Registration Deposit. Personal or company checks are NOT acceptable and will be returned to the sender. Check must be made payable to: "U.S. General Services Administration." If a Registration Deposit will be paid by credit card, Bidders must also provide the requested card information under the portion of the Bidder Registration Form titled "Registration Deposit". The Registration Deposit cannot be made via the Website.
- 4) To complete the Bidder registration process, send the completed Bidder Registration Form, along with the Registration Deposit, to:

U.S. General Services Administration
Office of Real Property Utilization and Disposal (1PZ)
Thomas P. O'Neill Federal Building
10 Causeway Street, Suite 1100
Boston, MA 02222
Attn: Lawanda Maryland
- 5) If the Registration Deposit is to be paid by credit card, the Bidder Registration Form can also be submitted to GSA by email to realestate.sales@gsa.gov.
- 6) At such time that the Bidder completes the online registration process on the Website, GSA receives the fully completed Bidder Registration Form, and GSA verifies the Bidder's Registration Deposit is received and in satisfactory form, the Bidder will be allowed to participate in the Auction.
- 7) It is the responsibility of the Bidder to ensure that adequate time is available to complete the registration process as described above. The Government makes no representation or guarantee that any additional assistance or time will be provided to complete the registration process. No Bidder will be allowed to participate in the Auction until the entire registration process is complete.
- 8) Registration may occur at any time prior to the close of the Auction. The Government, however, makes no representation or guarantee that a Bidder's registration will be completed prior to the announced date and time for the anticipated close of the Auction. Therefore, Bidders are encouraged to register before the Auction opens.

- 9) In the event a party completes the Bidder registration process, but never places a Bid on the Website, such party will be entitled to a refund of its Registration Deposit.

6. BIDDING IN GENERAL

- 1) After successful completion of the registration process described above, Bidders are permitted to participate in the Auction. Registered Bidders may place Bids by following the instructions on the Website. By submitting a Bid through the Website, each Bidder agrees that its Bid is a binding offer to purchase the Property. This means that Bidders are legally bound by any and all Bids submitted using such Bidder's username and password.

The Website provides up-to-date information on a Bidder's bidding status. A Bidder can check its bidding status by clicking on the "Bid History" section of the Website.

- 2) Bids received through the Website are date and time stamped Central Time. The Government will not be responsible for any discrepancies between the time indicated on the Website and any other time indicated, displayed, or otherwise stated or represented by a Bidder.
- 3) Bids must be submitted without contingencies.
- 4) The Website does not permit any party that is currently in default for non-payment or non-removal of items under any GSA auction to place a Bid. Once such party cures its default (and has registered to become a Bidder in accordance with the terms of this IFB), the Bidder will be permitted to place a Bid on the Website.

7. CONTINUOUS BIDDING RESULTS AND AUCTION INFORMATION

Bidders are strongly encouraged to monitor bidding activity on the Website. Bids are immediately posted on the Website upon receipt. If a Bidder does not have the High Bid and the Auction has not closed, that Bidder can place another Bid. Bids cannot be lowered or canceled provided, however, that a Bidder can decrease the maximum amount of its proxy Bid to the extent and in the manner described in the Flat Bidding and Proxy Bidding; Increasing a Bid Online Section below.

If a Bid is not accurately shown on the Website, call GSA at 617-565-5700. Bidders are urged to pay close attention to the Website which will contain new, revised, and useful information regarding the High Bid, the Bid Increment, and the closing date of the Auction. It is each Bidder's responsibility to monitor the Website for any updates to the Property and the IFB.

8. FLAT BIDDING AND PROXY BIDDING; INCREASING A BID ONLINE

- 1) The Website allows Bidders to place flat Bids or proxy Bids:

A flat Bid is a Bid with an amount that is at least the then lowest amount that the Website will allow to be placed in order to participate in the Auction. This means that a flat Bid will be either: (i) an amount that is at least the Starting Bid of the Auction (if a Bidder is the first Bidder to place a Bid); or (ii) an amount that is at least the then current High Bid plus the Bid Increment. This amount will not increase unless such Bidder manually submits another Bid on the Website.

Proxy bidding provides a Bidder with the ability to submit a Bid with a maximum amount that a Bidder is willing to pay for the Property, provided, however, that such maximum amount must be greater than the then current High Bid plus the Bid Increment. Note that such maximum amount does not need to be a

numeric multiple of the Bid Increment but must be a whole dollar amount. If a Bidder uses proxy bidding, the Website will automatically incrementally Bid on that Bidder's behalf to keep that Bidder's Bid as the then current High Bid until such maximum amount is reached. This means that, in certain instances, an amount greater or lesser than the Bid Increment may be placed by the Website. The maximum amount that a Bidder includes in its proxy Bid is not disclosed to other Bidders.

- 2) If a Bidder selects to receive e-mail notifications during registration, the Website will provide notification to such Bidder if its Bid is no longer the then current High Bid. If a Bidder desires to submit another Bid, it can submit another flat Bid or reset its maximum Bid amount under its proxy Bid until such time that the Auction closes. The Registration Deposit will apply to all subsequently placed Bids. When two proxy Bids compete, the proxy Bid containing the higher maximum amount that a Bidder is willing to pay for the Property will surpass the proxy Bid containing the lesser maximum amount that a Bidder is willing to pay for the Property even if the higher maximum amount does not exceed the lesser maximum amount by the full Bid Increment. In such a case, this means that the higher maximum amount of the proxy Bid will be placed. In the event an amount under a proxy Bid equals the amount placed by a flat Bid, the proxy Bid will be deemed to have surpassed the flat Bid and the Website will place the amount of the proxy Bid in a manner that indicates such priority.
- 3) A Bidder may increase or decrease its maximum amount under its proxy Bid at any time provided, however, that a Bidder may not decrease its maximum amount below the then current High Bid plus Bid Increment. If a Bidder's Bid is the then current High Bid, increasing such Bidder's maximum amount under its proxy Bid will not increase such High Bid unless and until another Bid is placed.

- 4) **All Bids must be made on the Website. The Government reserves the right to modify the Bid Increment at any time prior to the close of the Auction.**

9. TRANSMISSION AND RECEIPT OF BIDS

The Government will not be responsible for any failure attributable to the inability of the Bidder to transmit a Bid or the inability of the Government to receive a Bid for whatever reason. Failure to receive a Bid may include, but is not limited to the following:

- 1) Receipt of a garbled or incomplete Bid.
- 2) Availability or condition of the sending or receiving electronic equipment.
- 3) Incompatibility between the sending and receiving equipment and software.
- 4) Malfunctioning of any network, computer hardware or software.
- 5) Delay in transmission or receipt of a Bid.
- 6) Failure of Bidder to properly identify the Bid.
- 7) Security of Bid data.
- 8) Inability of Bidder to enter a Bid. For example: due to lost or forgotten password or system lock due to repeated login failures.
- 9) Unavailability of GSA personnel.

If a Bid is not accurately shown or a Bidder cannot enter a Bid on the Website, call GSA at 617-565-5700

for assistance.

The Website will NOT be available during the following system maintenance windows:

- **Saturday: 5:00 a.m. to 8:00 a.m. CT**
- **Sunday: 6:00 a.m. to 10:00 a.m. CT**

10. AUCTION CLOSE

- a) Posting of the Close of Auction. The Government will post on the Website the date and time on which the auction is anticipated to close (shown on the Website as “Close Time”). This posting is typically at least three (3) business days prior to the posted Close Time. The Website will also show the days, hours and minutes remaining until the Close Time (shown on the Website as “Time Remaining”).
- b) Inactivity Period and Closing of Auction. When the Close Time is posted, a twenty-four (24) hour inactivity period is established (shown on the Website as the “Inactivity Period”) and is posted under the “Bidding Details” tab of the Website. Note that the Website shows the Inactivity Period in minutes with 24-hours represented as 1440 minutes. In order for the Auction to close, the High Bid must remain unchanged for the Inactivity Period. Each time a new High Bid is received within the Inactivity Period or if the maximum amount that a Bidder is willing to pay for the Property under a proxy Bid is changed within the Inactivity Period, the Auction will automatically extend for an additional 24-hour Inactivity Period. The Time Remaining and Close Time will adjust accordingly. If the High Bid remains unchanged for the full Inactivity Period, the Auction will close.
- c) Exceptions for Weekends and Holidays. **Notwithstanding the foregoing, the Auction will not close if the Inactivity Period ends between: (i) 12:01 a.m. on Saturday through 11:59 p.m. on Sunday (“Weekend”); or (ii) 12:01 a.m. through 11:59 p.m. on any [Federal Holidays](#) (“Federal Holiday”). If the Inactivity Period ends on a Weekend or Federal Holiday, the Auction will automatically extend to the same time on the first business day following the Weekend or Federal Holidays.**
- d) **Bidders are responsible for monitoring the Website for the posting of the Initially Anticipated Close Date, the Inactivity Period, and any adjustments to the time and date of the anticipated close of the Auction.**

11. CONTINUING OFFERS

Each Bid received shall be deemed to be a continuing offer to purchase the Property until the earlier of: (a) 30 calendar days after the close of the Auction; or (b) the Bid is accepted or rejected by the Government. If the Government desires to accept any Bid after the expiration of such 30-calendar day period, the consent of the appropriate Bidder shall be obtained prior to such acceptance. Notwithstanding the foregoing, the Bid of the Backup Bidder shall be deemed to be a continuing offer to purchase the Property for the period of time that the Government retains the Registration Deposit of the Backup Bidder, as further described in the “Backup Bidder” Section below.

12. GOVERNMENT’S RIGHT TO ACCEPT A BID

Following the close of the Auction, the Government shall have the right (but not the obligation) to accept a Bid that is most advantageous to the Government as determined by the Government in its sole and absolute discretion.

Notwithstanding the foregoing, the amount of the Bid will be the premiere factor used by the Government in determining whether to accept a Bid and, unless another factor raises a concern as to the validity of the High

Bid at the close of the Auction and/or the ability of the Bidder of such High Bid to complete the transactions contemplated by this IFB, it will be the only factor used.

13. BID EXECUTED ON BEHALF OF BIDDER

- 1) If the Bidder Registration Form is executed by an attorney or agent on behalf of the Bidder, it shall be accompanied by an authenticated copy of their Power of Attorney or other evidence of their authority to act on behalf of the Bidder.
- 2) If the Bidder is a corporation, the Certificate of Corporate Bidder, included in this IFB, must be executed and accompany the Bidder Registration Form. Such certificate must be executed under the corporate seal of the Bidder by a duly authorized officer of the corporation other than the officer signing the Bidder Registration Form. In lieu of the Certificate, there may be attached to the Bidder Registration Form, copies of so much of the records of the corporation as will show the official character and authority of the officer signing the Bidder Registration Form, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.
- 3) If the Bidder is a partnership and all partners sign the Bidder Registration Form with a notation that they are all general partners, the Government will not ordinarily require any further proof of the existence of the partnership. If all the partners do not sign the Bidder Registration Form, then the names of all those except limited partners must be furnished on the Bidder Registration Form and the Government, in its discretion, may require evidence of the authority of the signer(s) to execute the Bidder Registration Form on behalf of the partnership.
- 4) If the Bidder is a limited liability company, a Certificate of Corporate Bidder, included in this IFB, must be completed and executed by the manager of the limited liability company, and accompany the Bidder Registration Form.

14. NOTICE OF ACCEPTANCE OR REJECTION

Notice by the Government of acceptance or rejection of the Bid shall be deemed to have been sufficiently given when faxed or mailed to the Bidder or its duly authorized representative at the fax/phone number or address indicated in the Bidder Registration Form. Rejection of a Bid shall also be deemed to have been sufficiently given upon the refund of a Registration Deposit, as described in the Refund of Registration Deposits Section below.

The processing of a Registration Deposit by the Government shall not constitute acceptance of any Bid. The Government reserves the right to reject any or all Bids or portions thereof for any reason.

15. AUCTION SUSPENSION OR CANCELLATION

The Government reserves the right to temporarily suspend or cancel the Auction for any reason (or no reason) without accepting any Bid and, further, has the right to resume the Auction or start a new auction at any time. In the event of a temporary suspension of the Auction due to technical problems or other bidding issues, the Government will re-open bidding with the High Bid that was posted to the Website immediately prior to the occurrence of such problems or issues and allow the Auction to proceed according to the bidding terms described herein. The Government reserves the right to cancel the sale of the Property and/or Auction at any time and Registration Deposits will be returned to Bidders without interest or further obligation by the Government.

16. ADDITIONAL DEPOSIT AND TRANSACTION CLOSING

Within three (3) business days of acceptance of the Accepted Bid, the Purchaser agrees to deposit an additional amount (the “**Additional Deposit**”) in the form of a certified check or cashier’s check, which when added to the Registration Deposit, will equal at least ten percent (10%) of the Purchase Price. Failure to provide the Additional Deposit will result in a default and forfeiture of the Registration Deposit. At the time of closing, all monies paid by the Purchaser will be credited, without interest, towards the Purchase Price.

17. REFUND OF REGISTRATION DEPOSITS

- 1) Registration Deposits accompanying Bids that are rejected will be refunded to Bidders without interest. Bidders who provided Registration Deposits by check will receive their check by mail. Refunds will only be processed to the same individual or entity identified on the Bidder Registration and Bid Form for Purchase of Government Real Property. Registration Deposits provided by credit card will be credited to the same account number provided. Refunds will usually be processed within three business days.
- 2) The Registration Deposit received from the Backup Bidder will be held in the manner described in the section immediately below. The Registration Deposit of the Bidder with the Accepted Bid will be held in accordance with the Agreement of Sale. All other Registration Deposits will be processed for refunds after the close of the Auction, or upon written request to withdraw from the Auction, unless the bidder is the first or second high bidder.

18. BACKUP BIDDER

The Government may elect to accept the Bid of the Backup Bidder if the Bidder of the originally Accepted Bid is unable to fully complete the transactions according to the terms and conditions of this IFB including, without limitation, if such Bidder fails to provide the Additional Deposit. The Backup Bidder’s Registration Deposit may be retained, at the Government’s discretion, without interest, until the Bidder of the originally Accepted Bid completes the transactions. If the Government elects to accept the Bid of the Backup Bidder, then the Backup Bidder becomes the Purchaser under the Agreement of Sale.

The Registration Deposit of the Backup Bidder will be returned in the event the Government does not elect to accept the Bid of the Backup Bidder. In the event that the Government is unable to complete the transaction with both the Bidder of the originally Accepted Bid and with the Backup Bidder, the Government reserves the right to consider the other remaining Bid(s) and accept any of the same if it is in the best interest of the Government, as determined by the Government in its sole discretion provided, however, that the Government will use the same evaluative factors described in the Government’s Right to Accept a Bid Section above.

19. ADDITIONAL INFORMATION

GSA will make reasonable efforts to answer requests for additional information concerning the Property to facilitate preparation of Bids.

20. BIDDER RESPONSIBLE FOR UNDERSTANDING THE IFB AND THE AUCTION

Each Bid shall be deemed to have been made with full knowledge of all terms, conditions, and requirements contained in this IFB and any amendments made thereto prior to the acceptance of a Bid by the Government. Bidders are strongly encouraged to review the information pertaining to the Property on the Website. Bidders understand and agree that any notices of changes to the terms of the IFB and/or the Auction are satisfactory

when made available on the Website.

21. WAIVER OF INFORMALITIES OR IRREGULARITIES

The Government may, at its election, waive any minor informality or irregularity in Bids received.

BIDDER REGISTRATION AND BID FORM FOR PURCHASE OF GOVERNMENT REAL PROPERTY

Penfield Reef Lighthouse
Long Island Sound, Fairfield, CT
IFB #: BOSTN123003001
REGISTRATION DEPOSIT: \$10,000.00

USERNAME: _____
(as established at RealEstateSales.gov)

Bidder Information: Please print or type legibly.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: (_____) _____ Fax: (_____) _____

E-mail: _____

BIDDER REPRESENTS THAT HE/SHE OPERATES AS (check which applies) see: Instructions to Bidders, Bid Executed on Behalf of Bidder for instructions:

- ☐ An individual _____
☐ A partnership consisting of _____
☐ A trustee, acting for _____
THE FOLLOWING MUST PROVIDE THEIR CERTIFICATE OF CORPORATE/ORGANIZATION BIDDER – SEE NEXT PAGE:
☐ A limited liability partnership consisting of _____
☐ A corporation, incorporated in the State of _____
☐ A limited liability company _____
☐ Other _____

Registration Deposit (check one):

- ☐ By certified or cashier's check made payable to the **U.S. General Services Administration**
- ☐ By Credit/Debit Card: _____ Exp: ____/____ CSC/CVC ____
☐ Visa ☐ MasterCard ☐ Debit
☐ Discover ☐ American Express

Name of Bidder as it appears on credit card _____

Certification and Authorization

The undersigned bidder hereby offers and agrees to purchase the Property as described in the accompanying Invitation for Bids (IFB) for any bids placed online by the undersigned and if any bid is accepted by the Government within THIRTY (30) calendar days after the auction close date. This Bid Form is made subject to the terms of IFB No. BOSTN123003001 including the Property Description, Terms of Sale, Instructions to Bidders, Special Terms of Sale, Bidder Registration and Bid Form For Purchase of Government Real Property, and any associated amendments to the IFB, all of which are incorporated herein and by reference made a part of any bid placed online at RealEstateSales.gov. If a bidder is providing the Registration Deposit by credit card, the bidder must be the authorized cardholder and agrees that his or her credit card account will be debited the full amount of the Registration Deposit, as specified in the IFB. In the event the bidder is not the Purchaser, the Registration Deposits will only be refunded as specified in the IFB. Information collected herein is governed by the Privacy Act of 1974 (5 U.S.C. Section 552a) and is being collected to register a bidder for the sale of Government property.

Signature: _____ **Date:** _____

Send Registration Form with Registration Deposit Attn: Lawanda Maryland to:
U.S. General Services Administration
Real Property Utilization and Disposal (1PZ)

EMAIL: Realestate.sales@gsa.gov

10 Causeway Street, Suite 1100, Boston MA 02222

CERTIFICATE OF CORPORATE/ORGANIZATION BIDDER

**Penfield Reef Lighthouse
Long Island Sound
Fairfield, CT
DISPOSAL #BOSTN123003001**

I, _____, certify that I am _____
(Secretary or Other Title) of the

corporation/organization named as the bidder in the Bidder Registration Form for Purchase of

Government Property (the "Form"); that _____ signed the Form
(Name of Authorized Representative)

on behalf of such bidder as the _____ of said
(Official Title)

corporation/organization; that the Form was duly signed for and on behalf of said corporation/organization by authority of its governing body and is within the scope of its corporate/organization powers; and that any bid placed for the purchase of the property is authorized by said corporation/organization and within the scope of its corporate/organization powers.

Signature of Authorized Representative

Date

Department of Energy and Environmental Protection
Land Acquisition and Management
79 Elm Street – 6th Floor
Hartford, CT 06106-5127

LEASE

THIS LEASE is made by and between the STATE OF CONNECTICUT, (hereinafter the “State” or “Lessor”) acting herein by Katherine S. Dykes, Commissioner of Energy and Environmental Protection, duly authorized under the provisions of Section 22a-27w of the Connecticut General Statutes, and _____, a _____ corporation (hereafter called the “Lessee”), for ONE DOLLAR (\$1.00), other good and valuable consideration the receipt of which is hereby acknowledged, and the covenants herein reserved and contained.

WITNESSETH:

That the State owns, and the Lessee has requested the State to lease Lessee, certain submerged lands held in public trust by the State underlying or associated with the Penfield Reef Lighthouse, Fairfield, Connecticut for the purpose of facilitating the preservation of such lighthouse pursuant to the National Historic Lighthouse Preservation Act of 2000, 54 U.S.C. §305101, et seq.

NOW THEREFORE:

Subject to and in consideration of the stipulations, restrictions and mutual covenants herein contained, the State does hereby lease unto the Lessee, and Lessee does hereby lease from the State, that certain piece or parcel of land (“the Premises”) located in Long Island Sound 9,700’+/- southeast of Fairfield Beach in the Town of Fairfield, County of Fairfield, State of Connecticut, being labeled as “Lease Area 80.00’ Radius From Center Point of Lighthouse” on a plan entitled, “Compilation Plan Prepared For The State of Connecticut Department of Energy and Environmental Protection, Land of: The State of Connecticut “Penfield Reef Lighthouse” Fairfield, Connecticut Scale: 1”=10’ June 28, 2017”, said plan being mapped and certified by Brian D. Florek, DEEP Supervisor of Surveys and Mapping. A description of the Premises being further set forth in Schedule A attached hereto:

The State and the Lessee expressly agree as follows and also to the terms and conditions set forth in Schedule B attached to and made a part of this Lease:

1. Term. The term of this Lease (the “Term”) shall be for a period of thirty (30) years, commencing on _____, 202__ and ending on _____, 205__, subject to the termination provisions within the following articles.

2. Renewal Option. Subject to the other terms of this Lease, the State grants to the Lessee one option to renew the term for a period of thirty (30) years on the same terms and conditions as set forth in this Lease, which option shall be exercised by Lessee by giving written notice to the State at least six (6) months before the expiration of the original term. Prior to the end of the second 30 year term, if Lessee or the State wish to further extend this Lease the parties will discuss the possibility of such an extension through the use of a new lease or other appropriate documentation.

3. Leasehold Area and Use.

- (a) The Premises shall be only used for residential, park, recreational, educational, cultural, or historic preservation purposes and as the foundation for the lighthouse constructed thereon (the "Lighthouse") consistent with the goals and policies of Section 22a-92 of the Connecticut General Statutes and the stipulations herein, provided that any residential use will be contingent on securing written State and local approval of any wastewater and sanitary disposal mechanism in accordance with local rules and historic systems and the historic degree of residential use. State approval may be withheld in the State's sole and absolute discretion. No commercial uses will be permitted.
- (b) This Lease conveys only the possession and control of the submerged lands directly beneath the Lighthouse, and those submerged structures which constitute or support its base, within the leasehold area described in Schedule A. It conveys no rights in and to any adjacent lands or structures, including, but not limited to, any jetties, rock formations, or seawalls that abut the leasehold area or which are within or in proximity thereto. Consequently, the Lessee shall have no right to preclude or otherwise prohibit the public's use of any such lands or structures, or of any submerged lands or structures beyond those which constitute or support the base of the Lighthouse, which Lighthouse is owned by Lessee and is not part of the Premises leased hereby. Further, this Lease conveys no rights in and to the waters of the State of Connecticut.
- (c) The Lessee shall not make any Improvements to the Premises without prior written approval of the State, which approval may be withheld in the State's sole and absolute discretion. Such approval by the State does not constitute approval of any permit otherwise necessary for any Improvement, including but not limited to coastal permits required pursuant to Sections 22a-28 through 22a-35; 22a-90 through 22a-110; or 22a-359 through 22a-363h of the Connecticut General Statutes. The Lessee is not required by this Lease to improve the Lighthouse, but as a condition of this Lease must comply with all obligations and restrictions under the terms of the transfer of title from the federal government.
- (d) For purposes of this Lease, the term "Improvements" means the installation, erection, alteration or removal of any and all fixtures, structures and other additions, as well as the installation, alteration, or removal of any and all soil, trees, water and other physical aspects of the Premises, which currently or hereafter exist at or on, or constitute a part of, the Premises including, without limitation: the planting or removal of any trees; the movement or alteration or creation of any pools, ponds, wetlands, or water courses; the placement of any soil, rock or other natural or man-made materials into the water; the modification or creation of any shoreline flood and erosion control structure into or adjacent to the water; the installation, erection, alteration or removal of any driveways, roads, piers, sidewalks, footpaths, foundations, footings, buildings, pools, patios, fences, decks, docks, or other structures; and/or the laying or removal of any pavement or other material at the Premises. The term "Improvements" does not mean the modification, repair, or restoration of the Lighthouse structure completed in accordance with the National Historic Lighthouse Preservation Act of 2000, 54 U.S.C. §305101 et seq.

- (e) Any and all Improvements that are made or otherwise undertaken, and all other work that is performed, at the Premises (herein, sometimes, the "Work") by the Lessee and/or its Contractors shall be done in a workmanlike and timely manner.
- (f) Neither the Lessee nor any of its Contractors shall be entitled to any reimbursement from the State for any such Work or Improvements; neither will the Lessee be entitled to any rent credits on account of such Work or Improvements. On the contrary, any and all such Work or Improvements shall be performed at the Lessee's sole cost, risk and expense.
- (g) The Lessee agrees that no debris shall be permitted to be disposed of or discarded on the Premises. The term "debris" includes, but is not limited to: discarded household trash, construction waste or materials, and any solid waste whatsoever.
- (h) Except for vessels berthed at a duly authorized docking or mooring structure, the Lessee shall not allow boats to be stored on the Premises without the express written consent of the State.

4. Rent.

- (a) During the term of this Lease, the Lessee shall pay both Base Rent and Additional Rent, as provided herein. The term "Rent" shall include and refer to all Base Rent and Additional Rent due hereunder from time to time.
- (b) Base Rent. Base Rent during the term shall be the sum of \$_____ for the initial and each subsequently exercised renewal term, none of which shall be refundable upon the expiration or earlier termination of this Lease. The State acknowledges that Lessee has paid the Base Rent for the initial term. Base Rent for any subsequently exercised renewal term shall be payable prior to the initiation of such renewal term.
- (c) Additional Rent. Lessee also shall pay or cause to be paid, without notice, abatement, deduction or set-off, as additional rent hereunder ("Additional Rent") any and all taxes, fines or other fees that would otherwise be the obligation of the State in accordance with the Section entitled "Payments" (herein collectively referred to as "Impositions" and individually as an "Imposition"). Lessee, however, may take the benefit of the provisions of any statute or ordinance permitting any such Imposition to be paid over a period of time, provided such payment over a period of time does not extend beyond the end of this Lease.
- (d) Lessee shall pay to the State any Additional Rent herein reserved that is payable directly to the State in the manner provided in the Section entitled "Payments," without notice or demand therefor. Lessee shall pay any Additional Rent not payable directly to the State promptly to the appropriate party.

5. Payments. The Lessee shall make all payments due to the State by check, made payable to "The Treasurer, State of Connecticut" and addressed to the Office Director, Land Acquisition and Management, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106, or such other place as the State may designate in writing.

6. Compliance with Conditions of Sale or Lease of Lighthouse. As a condition of this Lease, the Lessee shall comply with all terms, conditions, covenants, and restrictions relating to the sale or lease by the United States, pursuant to **54 U.S.C. §305101 et seq.**, of the Lighthouse or on any portion thereof. The breach of any such term, condition, covenant, or restriction by the Lessee, or his/her/their heirs, successors, or assigns shall constitute a default under the terms of this Lease resulting in the immediate termination of same.

7. Non Compliance. Any noncompliance by the Lessee with the terms of this Lease or of the terms of any approval, certificate, guidance document, or permit issued by the State, or any State statute or regulation, pertaining to activities and uses of and by the Lessee in connection with this Lease shall, after the expiration of the notice and cure provisions set forth in Section XIII of Schedule B (which shall apply to this Section as well), constitute an event of default and result in the immediate termination of this Lease, provided, however, that no termination shall occur if the noncompliance is cured or ceases in accordance with the provisions set forth in Section XIII of Schedule B. In the event of termination, all rights of the Lessee to occupy the Premises shall cease, notwithstanding the Lessee's right in the Lighthouse located thereon which have been acquired from the United States.

8. Cessation of Occupancy of Lighthouse. Upon termination of this Lease for any reason under the provisions set forth herein, all rights of the Lessee to occupy the Lighthouse or any portion thereof located on the Premises, and any and all right to occupy or otherwise utilize the Premises, shall immediately cease, notwithstanding any and all rights in and to said Lighthouse which the Lessee may have acquired from the United States.

9. Access. It is understood by the parties hereto that the lessee is not obligated to open the Lighthouse to the public.

IN WITNESS WHEREOF, the parties have set their hands.

Signed in the
Presence of:

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND
ENVIRONMENTAL PROTECTION

Witness: Katherine S. Dykes
(PRINTED NAME) Commissioner

Witness:
(PRINTED NAME)

STATE OF CONNECTICUT)
) SS: HARTFORD
COUNTY OF HARTFORD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Katherine S. Dykes, Commissioner, Department of Energy and Environmental Protection, State of Connecticut, on behalf of the State.

Commissioner of the Superior Court
Notary Public/Justice of the Peace
My Commission Expires:

Signed in the
Presence of:

LESSEE NAME

Witness: CEO Name
(PRINTED NAME) CEO Title

Witness:
(PRINTED NAME)

STATE OF CONNECTICUT)
) SS: _____
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____ CEO Name _____, _____ CEO Title _____ of the Lessee NP/Co.

Commissioner of the Superior Court
Notary Public/Justice of the Peace
My Commission Expires:

APPROVED:

William Tong
Attorney General

By: _____
Jeffrey B. Zeman
Assistant Attorney General

Date

SCHEDULE A

DESCRIPTION OF THE PREMISES

A certain piece or parcel of land located in Long Island Sound southeast of Shoal Point in the Town of Fairfield, County of Fairfield, State of Connecticut, being labeled as "Lease Area 80.00' Radius From Center Point of Lighthouse" on a plan entitled, "Compilation Plan Prepared For The State of Connecticut Department of Energy & Environmental Protection Land of: The State of Connecticut "Penfield Reef Lighthouse" Fairfield, Connecticut", Scale: 1"=10", Dated: June 28, 2017", such plan being mapped and certified substantially correct by Brian D. Florek, DEEP Supervisor of Surveys and Mapping. Such piece or parcel of land is more particularly described as follows:

Beginning at the approximate center point of the Penfield Reef Lighthouse, said center point having a Latitude of 41°-07'-01.67" N and a Longitude of 73°-13'-19.49" W; thence running an eighty (80.00') foot radius from said center point to complete an enclosed circle as shown on the above referenced plan.

The above described area contains approximately 20,106 s.f.

SCHEDULE B
STANDARD TERMS AND CONDITIONS

The State and the Lessee expressly agree to the following stipulations, conditions and covenants:

I. Audit and Inspection of Premises, Places of Business and Records.

- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Lessee's and Lessee Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Lease.
- (b) The Lessee shall maintain, and shall require each of its contractors or agents to maintain, accurate and complete Records. The Lessee shall make all of its and the Lessee Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Lessee with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) Lessee shall provide free copies of such Records to the State.
- (e) The Lessee shall keep and preserve or cause to be kept and preserved all of its and Lessee Parties' Records until three (3) years after the latter of (i) final payment under this Lease, or (ii) the expiration or earlier termination of this Lease, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Lessee shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Lessee shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Lessee shall cooperate with an exit conference.
- (g) The Lessee shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Lessee Party.

II. Maintenance. The Lessee agrees to maintain the Premises, at its sole cost and expenses, in a clean and safe condition, to the satisfaction of the State, and to arrange for the orderly use of the Premises. In so doing, the Lessee will keep the Premises clean and free from debris so as to ensure a pleasing appearance.

III. Compliance with Laws. The Lessee shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any Applicable Laws, or any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it commercially impracticable to obtain fire or other insurance thereon, or as will cause or be likely to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance. The Lessee further agrees that it will (and will ensure that its Contractors) comply with all Applicable Laws in connection with its and their use of the

Premises including, but not limited to, whenever either enters or performs any work or engages in activity on or from the Premises during the Term hereof.

IV. Applicable Laws. For purposes of this Lease, the term “Applicable Laws” means and includes all laws, ordinances, rules and regulations, including deed restrictions and charitable trust laws, (herein “Laws”) of: (a) all federal, state and local governmental authorities having jurisdiction which pertain to the use or occupancy of any land or buildings or any activity thereon or thereat including, but not limited to, all applicable building, fire, health and safety codes and regulations; (b) the National Board of Fire Underwriters; (c) any local Board of Fire Underwriters; (d) any public utilities and other bodies having similar functions; and (e) any liability, fire, or other insurance companies having policies outstanding with respect to the Premises. Except as, and then only to the extent, otherwise specified by the State in any writing which makes specific reference to this Lease, the term “Applicable Laws” also means and includes all zoning, noise and other local Laws that pertain, or, but for the State’s being the owner of record of the Premises, would pertain, to the Premises or any use or occupancy thereof or activity thereon or thereat. The Lessee shall comply with all federal, state and municipal laws and regulations including, but not limited to, environmental health, police, nuisance, fire, highways, sidewalks and parking areas (including removal of snow and ice therefrom), public utilities, and other matters, and with the regulations of all persons or corporations supplying gas, electricity or steam on the Premises, and shall indemnify, defend and hold harmless the State against all fines, penalties, expenses, damages and costs for violation thereof any and all Applicable Laws. Nothing herein shall constitute nor be deemed to constitute the issuance of a permit by the Lessor to the Lessee to undertake any regulated activity on the Premises.

V. Environmental and other conditions; Prohibitions on use.

(a) Lessee acknowledges and agrees that any information which in any manner pertains to the Premises, or any part thereof, and supplied or made available by the State or any of its representatives (herein, individually and collectively, referred to as “Information”), has been (or, in the case of that supplied in the future, will be) furnished to Lessee solely as a courtesy. WITHOUT LIMITING THE GENERALITY OR EFFECT OF THE FOREGOING, LESSEE ACKNOWLEDGES AND AGREES THAT ALL INFORMATION PROVIDED, AND THE PREMISES ARE LEASED, ON AN AS-IS, WHERE-IS BASIS AND THAT THE STATE HAS NOT MADE, DOES NOT MAKE AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE), INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITIONS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE INFORMATION OR THE PREMISES. Lessee further acknowledges and agrees that no representations, whether written or oral, have been made by the State or any of its representatives regarding any tax consequences or investment potential of leasing the Premises (including, but not limited to, restoring the same) in order to induce Lessee to enter into this Lease or otherwise.

(b) Lessee acknowledges, represents and warrants that Lessee is familiar with the Premises and has made such independent investigations, as Lessee deems necessary or appropriate concerning the Premises. THE STATE MAKES NO REPRESENTATIONS OR WARRANTIES AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY, OR GUARANTY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PHYSICAL CONDITIONS OR ANY OTHER ASPECT OF THE PREMISES INCLUDING, BUT NOT LIMITED TO, THE COMPLIANCE OF THE PREMISES WITH ANY APPLICABLE LAWS OR REGULATIONS, THE FINANCIAL EARNING CAPACITY OF

THE OPERATION OF THE PREMISES, THE NATURE OR EXTENT OF ANY RIGHT-OF-WAY, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION, OR OTHERWISE, THE EXISTENCE OF SOIL INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, SUSCEPTIBILITY TO LANDSLIDES, SUFFICIENCY OF UNDER-SHORING, SUFFICIENCY OF DRAINAGE, WHETHER THE PREMISES ARE LOCATED WHOLLY OR PARTIALLY IN A FLOOD PLAIN OR A FLOOD HAZARD BOUNDARY OR SIMILAR AREA, THE EXISTENCE OR NON-EXISTENCE OF ANY HAZARDOUS WASTE OR OTHER REGULATED MATERIALS, OR SUBSTANCES, OR OTHER TOXIC MATERIALS OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ASBESTOS OR PETROLEUM PRODUCTS) OR ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PREMISES.

- (c) Lessee agrees not to use, dispose, store, discharge or generate any asbestos or other Regulated Material at or on the Premises in violation of any Environmental Law or any other applicable law, rule or regulation.
- (d) Lessee shall have no liability for any Existing Environmental Conditions except to the extent that any proposed or actual use or occupancy of all or any portion of the Premises (including, but not limited to, any restoration, repair, alteration or improvement of any buildings at or on the same) by Lessee would violate or result in the violation of any Environmental Law, or any such law requires any such condition to be removed, remediated or otherwise remedied or addressed in connection therewith, in which case Lessee agrees to notify the State of such condition, and shall then remove or remedy said condition subject the State's approval of the means and/or methods to be employed to effect that work, all at Lessee's sole cost and expense.
- (e) Lessee agrees to indemnify and save the State harmless against any losses, damages, costs, liabilities and claims suffered by State in connection with a breach by Lessee of its representations or obligations set forth in this Section, except for such losses, damages, costs, liabilities and claims caused by State's gross negligence or intentional misconduct. The provisions of this Subsection shall survive the expiration or earlier termination of this Lease and any holdover period.
- (f) For purposes of this Section, the following terms shall have the meanings ascribed thereto below:
 - i. "Environmental Conditions" means (A) circumstances with respect to soil, surface water, ground water, and/or and similar environmental media at, emanating from or migrating onto the E/R/R District that may require remedial action and/or that may result in claims or demands by, or liabilities to, third parties, including but not limited to any governmental authorities; or (B) any release of any Regulated Materials into the environment; or (C) any noncompliance with any Environmental Laws;
 - ii. "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations, now or hereafter existing, of any Governmental Authority pertaining to the environment, including without limitation, the federal Water Pollution Control Amendments of 1972 as amended by the Clean Water Act, as amended, 33 U.S.C. §§ 1251 *et seq.*, the federal Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*, the

federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 *et seq.*, the federal Hazardous Materials Transportation Act of 1975, as amended, 49 U.S.C. §§ 5101 *et seq.*, the federal Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300f *et seq.*, the federal Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601 *et seq.* and any and all comparable or similar environmental laws, statutes, ordinances, rules or regulations of the state of Connecticut applicable to the regulation or control of any Regulated Materials or to the design, development, purchase, acquisition, disposition, equipping, construction, financing, leasing, maintenance, ownership, occupancy, possession, control, management, use or non-use or operation of any property, facility, structure or improvement forming part of the Premises;

iii. “Existing Environmental Conditions” means any Environmental Conditions at, on or under the Premises (including Regulated Materials) existing on or before the Commencement Date of this Lease; and

iv. “Regulated Materials” means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined, determined, listed, classified, identified, regulated as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous wastes,” “pollutants,” “contaminants,” “toxic wastes,” “toxic materials,” or “toxic substances” or terms of similar meaning under any applicable law, or under any rules or regulations adopted or promulgated pursuant thereto, including any Environmental Laws; and (ii) any oil, petroleum or petroleum derived substance, any flammable substances or explosives, any radioactive substances or radioactive materials, any hazardous wastes or substances, any toxic wastes or substances, or any other materials or pollutants which cause any part of any facility, structure or improvement to be in violation of any Environmental Law; and (iii) asbestos in any form, urea formaldehyde foam insulation, or electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of applicable legal or regulatory limits.

(g) Lessee covenants and agrees that it will not knowingly use or occupy, nor permit the Premises to be used or occupied, for any purpose (i) other than as provided for herein; (ii) which shall violate any certificate of occupancy or any zoning, land use, or building restriction then in force relating to the Premises; (iii) which would cause or result in the breach of any covenant, restriction, license, condition, easement or agreement covering or affecting the use of the Premises; or (iv) which would cause or result in any violation of any applicable law, rule or regulation. Without limiting the foregoing, Lessee shall not use or occupy any portion of the Premises, nor permit any portion to be used or occupied, for (A) a facility that sells or displays any material that is obscene, pornographic or similarly sexually explicit, (B) any off-track betting, casino or other type of gambling operation or sports facility in which gambling is allowed, (C) any pawn shop, (D) any facility a primary purpose of which is the fueling, service or repair of automobiles or other machinery or equipment, and (E) any facility which sells or distributes firearms or explosive devices.

- (h) Lessee further covenants and agrees that it will not knowingly suffer any act to be done or any condition to exist on the Premises, or any article to be brought thereon, which may be unreasonably dangerous or noxious or which constitutes a nuisance, public or private, or which may make void or render voidable any insurance contract then in force with respect to the Premises or any adjacent property, or make it impracticable to obtain or maintain any insurance required to be maintained by Lessee under this Lease, or which causes obnoxious odors to emanate or to be dispelled from the Premises.
- (i) Lessee shall ensure that the provisions of Subsection (c) through (h) and this Subsection (i) of this Section are incorporated verbatim in all subleases and other agreements under or by which any person or entity may be permitted or allowed to use or occupy all or any portion of the Premises.
- (j) For purposes of this Subsection, the term "State" shall mean the agency through which this Lease was entered into on behalf of the State of Connecticut. The Lessee, for a period of ten years following the date of termination of this Lease, shall maintain copies of all records required by law to be generated by it with respect to environmental conditions on the Premises which are the subject of this Lease, and of all incidents impacting same ("Event"). For purposes of this Lease, an Event shall include, but not be limited to, the discharge, spillage, uncontrolled loss, seepage, or infiltration, of oil, or petroleum, or chemical liquids or solid, gaseous products, or hazardous waste, or waste regulated under state or federal law. Within Twenty-four hours following the occurrence of any Event, the Lessee shall notify the State of same in writing. Said notification to the State shall be in addition to, and not in lieu of, any and all other record keeping and reporting requirements imposed upon the Lessee by law. Upon written request by the State, the Lessee shall permit the State to inspect the premises any and all records required to be maintained hereunder, and promptly shall provide the State with such copies of same as the State may request in writing, at no cost to the State. The Lessee hereby waives any claim of privilege that may attach to said records.

VI. No Assignment or Subletting. The Lessee shall not sublet, assign, pledge, mortgage, hypothecate or otherwise transfer or convey all or any part of the Premises, this Lease, or any interest therein or herein or any estate created hereby (herein, a "Transfer") without receipt of written approval of the State, which approval may be withheld in its sole and absolute discretion. Any Transfer effected or attempted to be effected in contravention of this Section shall be null and void, ab initio. The foregoing shall not prohibit use of the Premises for the uses permitted under this Lease by invitees of Lessee.

VII. Special Flood Hazard Provisions. In the event any portion of the Premises are located within a 100 year flood plain, no National Flood Insurance Program insurable structures shall be placed on the Premises and no obstructions shall be placed on the Premises that would increase flood hazards or act as an impediment to stream flow or raise flood water heights without the explicit written consent of the State as stipulated below. The Lessee must obtain the State's prior written consent in order to undertake any such site improvements or construction activities and before placing any structures on the Premises, which consent may be withheld in the State's sole and absolute discretion. Improvements and construction activities subject to this provision include, but are not limited to, any permanent or temporary structures, fencing, roadways, walkways, site grading, drainage, landscaping, excavation and/or removal or addition of sand, gravel, or fill from the Premises. Such written consent must be obtained from the Director of the Inland Water

Resources Division of the Department of Energy and Environmental Protection, Bureau of Water Protection and Land Reuse or successor. Notice of such written consent shall also be provided to the Office Director of Land Acquisition and as hereinafter provided for in this Lease. Any failure by the Lessee to obtain the aforementioned consents will be considered cause for termination of the Lease by the State.

VIII. Insurance.

- (a) Subject to the provisions of Subsection (b) of this Section, the Lessee agrees that, throughout the Term of this Lease, including any supplements hereto or renewals hereof, it will procure and maintain, and will require its Contractors to maintain, the following types and amounts of insurance on the terms specified in this Section, all at no cost to the State:
 - i. COMMERCIAL GENERAL LIABILITY Insurance (including Contractual Liability, Independent Contractors, Premises and Operations, Products and Completed Operations and Broad Form Property Damage coverages) with a total limit of liability of not less than One Million Dollars (\$1,000,000) for all damages for, or arising out of, bodily injuries to or death of all persons in any one accident or occurrence, and, subject to that limit per accident, and the provisions of Subdivision (b)ii of this Section, a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000), for all damages for, or arising out of, bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period;
- (b) Notwithstanding any other provision of Subsection (a) of this Section to the contrary:
 - i. Any party required to maintain insurance hereunder (herein, individually, an "Insuring Party" and, collectively, the "Insuring Parties") shall be deemed to be in compliance with Subsection (a) of this Section even if such party's insurance policy(ies) are not written for amounts specified in Subdivisions (a)i, ii, and/or iv of this Section, providing said party carries Umbrella Liability insurance for any differences in the amounts specified therefor and the policy(ies) for such Umbrella Liability insurance follow(s) the form of said party's primary coverages; and
 - ii. Unless any commercial general liability insurance maintained pursuant to Subdivision (a)i of this Section is written solely for this project, the general aggregate limit shall be twice the occurrence limit;
- (c) The State of Connecticut and its officials, agents and employees shall be named as additional insureds under any and all coverages (other than workers' compensation insurance) maintained pursuant to Subdivisions (a)i, ii, iii, and iv and Subsection (b) of this Section.
- (d) Upon execution of this Lease and on or before the tenth (10th) business day preceding every subsequent anniversary date of the execution of the Lease during the term of this Lease, the Lessee agrees to furnish to the State, only on the form or forms supplied or accepted by the State, a certificate of insurance and an additional insured endorsement fully executed by an insurance company or companies satisfactory to the State, for the insurance

policy or policies required hereinabove, which policy or policies shall be in accordance with the terms of said certificate of insurance. If such policy or policies approve the coverage for additional insured parties, such relevant section or section of the policy or policies shall be provided to the State along with each required certificate of insurance. Each certificate of insurance shall specify amounts of deductibles, if any, for each type of coverage in the policy or policies. Deductibles shall not exceed amounts approved by the State in writing. If at any time during the term of this Lease, the Lessee shall fail to provide any such insurance documentation within ten (10) business days after written notice from the State, or duly maintain (or ensure that its Contractors maintain) all required insurance coverage in full force and effect, then the State, in addition to any other remedies it may have, all of which are preserved for the State, may either immediately terminate this Lease or procure or provide alternate insurance coverage and charge the Lessee the cost thereof, which amounts shall then be promptly paid by the Lessee to the State. Copies of all required insurance policies shall be retained by the Lessee until three (3) years after the expiration or earlier termination of the term of this Lease.

- (e) The amount of casualty insurance maintained by the Lessee shall in no way limit any obligations the Lessee otherwise may have under this Lease to repair or reconstruct any improvements constituting a part of the Premises or any portion thereof following a casualty.
- (f) All of the Insuring Parties' insurers shall be licensed by the State of Connecticut and be rated A-(VIII) or better by the latest edition of A. M. Best's Rating Guide or, if such guide is no longer available, any generally recognized replacement therefor. All insurance required hereunder shall be written "occurrence" (as opposed to "claims made") basis, except for professional liability insurance, which may be maintained on a "claims made" basis; providing, however, that the named insured also shall be obligated to procure an extended reporting period thereto or a subsequent "claims made" policy with the same retroactive date as the prior "claims made" policy, as necessary to protect the named insured from any claims, actions or causes of action which first accrue during the initial policy period, which shall be retroactive to the date prior to that when the named insured commenced performing any work for or with respect to the Premises.
- (g) Each Insuring Party shall be fully and solely responsible for and thus shall pay any and all costs and expenses as a result of any and all coverage deductibles and/or self-insured retentions under any policy(ies) of insurance maintained by it. None of the Insuring Parties' insurers shall have any right of subrogation or recovery against the State or any of the State's officials, agents or employees, all of which rights are hereby waived. All insurance maintained by each Insuring Party shall be primary and noncontributory and shall not be in excess of any other insurance.
- (h) Nothing herein shall preclude any Insuring Party from procuring and maintaining, at such party's sole cost and expense, such additional insurance coverage as such party deems desirable or appropriate, providing, however, that all liability insurance maintained by any Insuring Party covering the Premises or any activities at the same shall name the State and the State's officials, agents and employees as additional insureds. Any insurance maintained by the State shall be in excess of any and all insurance maintained by each Insuring Party, and shall not contribute with it.

- (i) The insurance policy(ies) required under this Article shall not be subject to cancellation unless notice is given to the State, in the manner set forth in this Lease for providing “Notices” at least thirty (30) days prior to the date of cancellation.
- (j) Except as otherwise provided to the contrary in this Section, any insurance required by this Lease may be obtained by means of any combination of primary and umbrella coverages and by endorsement and/or rider to a separate or blanket policy and/or under a blanket policy in lieu of a separate policy or policies, provided that the Lessee-Insuring Party shall deliver a certificate of insurance of any said separate or blanket policies and/or endorsements and/or riders evidencing to the State that the same complies in all respects with the provisions of this Lease, and that the coverages thereunder and the protection afforded the State thereunder are at least equal to the coverages and protection which would be provided under a separate policy or policies procured solely for the Premises.
- (k) The Lessee shall neither do nor allow its Contractors to do anything (or fail to do anything) whereby any of the insurance required by the provisions of this Section shall or may be invalidated in whole or in part. In the event that any of the Lessee’s Contractors so acts (or fails to act), then the Lessee shall promptly use commercially reasonable efforts to eliminate that condition.
- (l) The State shall have the right to review and revise the insurance requirements applicable to the Lessee and its Contractors during the term of this Lease and to make reasonable adjustments to the types and amounts of, and terms pertaining to, insurance coverage required hereunder, as the State reasonably deems to be prudent in the circumstances, based upon increased costs of construction, inflation, statutory law, court decisions, claims history, and other relevant factors.
- (m) The failure of the State, at any time or from time to time, to enforce the provisions of this Section concerning insurance coverage shall not constitute a waiver of such provisions; neither shall the Lessee’s or its Contractors’ obligation to maintain insurance, nor any failure by the State to enforce such obligations, in any respect reduce the obligation of the Lessee or its Contractors to indemnify, defend and hold and/or save harmless the State as provided elsewhere in this Lease.
- (n) Each Insuring Party shall produce, within five (5) business days, a copy or copies of all applicable insurance policies requested by the State. The State is hereby authorized to contact the insurance provider(s) of the insurance policies required under this Lease and obtain such policy(ies) directly.
- (o) Unless requested otherwise by the State of Connecticut, each Insuring Party and its insurers shall waive sovereign immunity as a defense and shall not use the defense of sovereign immunity in the adjustment of claims or in the defense of any suit brought against it or the State. Each Insuring Party shall assume and pay all costs and billings for premiums and audit charges earned and payable under the required insurance. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless.
- (p) The provisions of this Lease by which the Lessee has agreed to indemnify the State and this Section (including this Subsection) shall be incorporated and made a part of each contract or other agreement which the Lessee enters into with any Contractor appropriately modified to reflect the relationship

of the parties; providing, however, that all references to, and all rights and protections afforded to the State, as provided in said provisions, remain unchanged – it being understood and agreed, however, that the provisions of Subsections (e) and (f) of this Section only shall be incorporated in agreements with the Lessee's subtenants, if any; and provided, further, that the requirement to maintain Liquor Law Liability Insurance pursuant to Subdivision (a) iv of this Section only shall apply to those subtenants and concessionaires who sell or serve alcoholic beverages at or from the Premises.

- (q) The provisions of this Section shall survive the expiration or earlier termination of this Lease (the "Lease End Date") to the extent they require the Lessee and/or any Contractor to maintain insurance coverage for a specific period of time that has not as yet expired as of the Lease End Date or relate to or specify any rights, remedies and/or terms that apply to any insurance coverage which applies to any claims that arise or are made in connection with the Premises whether before or after the Lease End Date.
- (r) To the extent any of the insurance required hereunder becomes commercially unavailable, the parties will cooperate on a modification of the requirements to address each other's concerns and adapt the requirements to then current conditions.

IX. Indemnification.

- (a) The Lessee shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Lease, including the acts of commission or omission (collectively, the "Acts") of the Lessee or Lessee Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Lease. The Lessee shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. The Lessee's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Lessee's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (b) The Lessee shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.
- (c) The Lessee shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Lessee or any Lessee Parties. The State shall give the Lessee reasonable notice of any such Claims.
- (d) The Lessee's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of the Lease, without being lessened or compromised in any way, even where the Lessee is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

- (e) The Lessee shall carry and maintain at all times during the term of the Lease, and during the time that any provisions survive the term of the Lease, sufficient general liability insurance to satisfy its obligations under this Lease. The Lessee shall name the State as an additional insured on the policy and shall provide a copy of the policy to the State prior to the effective date of the Lease. The Lessee shall not begin Performance until the delivery of the policy to the State. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency is contributorily negligent.
- (f) This Section shall survive the Termination of the Lease and shall not be limited by reason of any insurance coverage.

X. Hold Harmless. The Lessee will at no time hold the State responsible for damage, theft or acts of vandalism occurring to equipment or property owned or leased by it or in its possession and located on the Premises or any other damage of any nature that may be sustained by such equipment or property while located on the Premises, except as such damage is caused by the negligence of the State's agents, employees and representatives acting within the apparent scope of their authority. The provisions of this Section shall survive the expiration or earlier termination of this Lease and any holdover period.

XI. Taxes, Fines and Utilities.

- (a) The Lessee shall be responsible for securing, and paying for, any and all water, gas, oil, electricity, sewage and other private and/or public utilities that are delivered to, and/or consumed or otherwise used at, the Premises during the Term of this Lease, unless otherwise specifically provided to the contrary in this Lease. As and to the extent requested by the State, the Lessee shall abandon and make safe all utility connections required for the Premises at the end of this Lease, all at the Lessee's sole cost and expense.
- (b) The Lessee also hereby assumes and shall pay all taxes, if any, levied on or against the Premises for all tax periods which occur during the Term of this Lease. All grants-in-lieu of taxes (under Section 12-19a of the General Statutes of Connecticut as the same may be amended) also shall be assumed and paid by the Lessee for all tax periods which occur during the Term of this Lease, if such a grant-in-lieu of taxes concerning the Premises is required of the State. Any taxes or grants-in-lieu of taxes paid or payable with respect to any portion of any tax period which occurs prior to the commencement of, or subsequent to the expiration or earlier termination of, this Lease shall be prorated by dividing the amount otherwise payable during said tax period by the number of days encompassed within said period and multiplying the resulting quotient by the number of days this Lease was effect during such tax period. For purposes of this Lease a "tax period" means that period of time for or with respect to which any taxes or grants-in-lieu of taxes are or have been levied, due and/or paid or payable to any taxing authority within whose jurisdiction the Premises are located.
- (c) The Lessee will be responsible for and pay all fees, fines and/or penalties assessed for violation of, or which are required to be paid in order to comply, for compliance with all State and municipal health and building codes and regulations.
- (d) The provisions of this Section shall survive the expiration or earlier termination of this Lease and any holdover period.

- XII. No Waste.** The Lessee shall not mutilate, damage, misuse, or commit or suffer waste on the Premises, but shall keep the same and upon the termination hereof deliver them up, in as good condition as they may be put in by the Lessee or the State, ordinary wear and tear, fire without fault or malfeasance of any occupant of the Premises, and damages by the elements without concurring fault on the part of the Lessee, excepted.
- XIII. State's Right to Terminate.** Notwithstanding any provision in this Lease, in the event of a violation of this Lease by Lessee, the State reserves the right to terminate this Lease at any time during the initial Term or any renewal or extension thereof upon one hundred and eighty (180) days' prior written notice to the Lessee, provided, that the State shall give written notice to the Lessee of termination hereof at its principal place of business, as set forth in Section XXIX of this Schedule B, and provided, that the Lessee shall have a period of sixty (60) days from the date of receipt of said notice within which to cure or cease any violations or failure on its part to perform any stipulation, requirement or condition of this Lease or within which to diligently commence and continue efforts to cure such failure in a reasonable time after such sixty (60) day period (and in the event of any such cure or cessation of a violation or failure the State shall not terminate this Lease on account thereof). In the event the State so terminates the Lease, the Rent (as herein defined) shall be apportioned as of the date of termination. Such termination shall in no event be deemed to be a breach of contract; and all rights, duties, and obligations hereunder, except those obligations which specifically survive the termination of this Lease, shall be null and void, so that no party shall have any further rights, duties, or obligations to any other, except as otherwise specifically provided herein or in the written notice of termination. In the event the State terminates the Lease as the result of the substantial destruction of the Lighthouse, as ~~reasonably~~ determined by the State, the Lessee shall remove the remnant structures to the State's satisfaction.
- XIV. Lessee's Right to Terminate.** If during the term of this Lease, the Lessee determines that it no longer is able to continue its operations on the Premises, it shall so notify the State in writing and such notification shall constitute a termination of this Lease, whereupon the parties hereto shall cease to have any further obligation or liability to one another, provided that Lessee shall be responsible for all Rent that may have accrued through the date of termination.
- XV. Duties at End of Lease.**
- (a) At the expiration or earlier termination of this Lease, the Lessee will quit and surrender the Premises hereby leased and, in so doing, remove all of its personal property from the Premises at its own sole cost and expense, leaving the Premises in as good or better condition as when it took occupancy, reasonable wear and tear excepted. In the event the Lessee fails to vacate the Premises at the expiration or earlier termination of this Lease, the Lessee shall become a tenant at sufferance until the Lessee vacates the Premises on the same terms and conditions specified herein as if the Term hereof had not ended; providing, however, that (i) the Term of this Lease shall not be, nor deemed to be, renewed or otherwise extended, (ii) the Lessee shall not have any possessory or other rights in or to the Premises, all of which are hereby disclaimed by the Lessee, (iii) the Lessee shall pay the State a "use and occupancy fee" on the first day of each month or part thereof that the Lessee has not vacated the Premises equal to \$1,250 per month, which sum, for purposes of this Section, the parties agree represents the fair market rental value of the Premises at the time of said termination, and in addition to any and all other rights that State has or may have against the Lessee, all of which are hereby reserved to the State, the Lessee shall

reimburse the State for any and all costs and expenses which are incurred by the State (including, but not limited to, attorney's fees and costs) in connection with any effort that that may be undertaken by the State to have or to seek to have the Lessee and/or any other person(s) removed from the Premises and/or to collect any sums due to the State under this Lease. Without limiting the generality of the foregoing, the Lessee agrees that, for and so long as the Lessee shall continue to occupy the Premises, the Lessee will continue to be bound by and will comply with any and all of the Lessee's obligations that it has agreed to perform during the Term of this Lease, notwithstanding that the Term of this Lease shall not be extended thereby.

- (b) Except as otherwise provided for in the Section entitled "Use," at the expiration or earlier termination of this Lease, the Lessee shall remove all Improvements (including, but not limited to, signs, lighting, fences, pier protection devices, paved areas and sidewalks) that have been made by or on behalf of the Lessee and restore the Premises to the same physical condition in which it existed immediately before the execution of this Lease, all at no expense to the State. It shall be understood that the Lessee shall not be required to remove the Lighthouse, except as provided for in the Section entitled "State's Right to Terminate." In the event the Lessee shall not fulfill this obligation within a reasonable time when requested by the State, the State shall at its option arrange to have such work done and shall bill the Lessee for all expenses incurred in connection with the same. The Lessee shall promptly pay all such amounts when billed, without recourse.
- (c) Upon the expiration or earlier termination of this Lease, the proceeds of all insurance policies payable on account of any casualty or like occurrence which occurs on or about or otherwise affects the Premises shall be paid to the State to the extent any of such proceeds have not been used to pay any costs or expenses associated with repairing or restoring any damage caused thereby.
- (d) The provisions of this Section shall survive the expiration or earlier termination of this Lease and any holdover period.

XVI. State's Rights of Re-entry. In the event of termination of this Lease under any article of this Lease, it shall be lawful for the State to re-enter and resume possession of the Premises, and the same to have again, repossess and enjoy, or to dispossess and remove all persons and their goods and chattels therefrom without liability in law or equity for any damage caused by such removal. The Lessee expressly covenants and agrees to pay the costs and expenses including attorney's fees of the State in collecting the same and in re-entering said Premises. Upon any such lawful termination, the parties will cease to have any further obligation or liability to each other.

XVII. Americans with Disabilities Act (ADA). The Lessee represents that it is familiar with the terms of the Americans with Disabilities Act of 1990 (the "Act"), Public Law 101-336, and that the Lessee and its Contractors are and will remain in compliance with the Act in performance of this Lease throughout the Term hereof. The parties acknowledge that no change is required to Premises to comply with the ADA. Without limiting the foregoing, the Lessee agrees that, in performance of this Lease, neither it nor its Contractors: (a) shall discriminate against a qualified individual with a disability because of the disability (to the extent that said disability does not impede the individual's ability to perform the work for which the individual is applying or has been hired) of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment; (b) shall exclude or deny

any qualified individual with a disability, by reason of such disability, from participation in, or the enjoyment or receipt of, any of the respective benefits, services, programs or activities offered by the Lessee or its Contractors; and (c) shall discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided thereby. The Lessee warrants that it will hold the State harmless and indemnify the State from any liability which may be imposed upon the State as a result of any failure of the Lessee or its Contractors to be in compliance with this Act, as the same applies to performance under this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and any holdover period.

XVIII. Other Provisions Required By Law. Each and every provision of law and clause required by law to be inserted in this Lease shall be deemed to be inserted herein and the Lease shall be read and enforced as though it were included herein, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the request of either party, the Lease shall forthwith be physically amended to make such insertion

XIX. Executive Orders and Other Enactments.

- a. All references in this Lease to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Lease at any time during its term, or that may be made applicable to the Lease during its term. This Lease shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Lessee is not relieved of its obligation to perform under this Agreement if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.
- b. This Lease is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Lease as if they had been fully set forth in it.
- c. This Lease may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Lease as if fully set forth in it.

XX. Campaign Contribution Restriction. For all State contracts, defined in Conn. Gen. Stat. §9-612 as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Lease expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

XXI. Nondiscrimination.

(a) For purposes of this Section, the following terms are defined as follows:

- i. "Commission" means the Commission on Human Rights and Opportunities;

ii. "Contract" and "contract" mean the Lease and include any extension or modification of the Contract or contract;

iii. "Contractor" and "contractor" mean the Lessee and include any successors or assigns of the Contractor or contractor;

iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;

v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

vii. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against

any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(i) Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box: ☐

XXII. Discrepancies, Errors or Omissions. In case of conflicts, discrepancies, errors, or omissions among the various parts of this Lease any such matter shall be submitted immediately by the Lessee to the State for clarification. The State shall issue such clarification within a reasonable period of time. Any services affected by such

conflicts, discrepancies, errors, or omissions which are performed by the Lessee prior to clarification by the State shall be at Lessee’s risk.

XXIII. Condemnation. If, after the execution and prior to the expiration of the term of this Lease the entire Premises shall be appropriated by the right of Eminent Domain, this Lease shall terminate on the date of said appropriation. If a portion of the Premises is appropriated by the right of Eminent Domain, the Lease shall at the option of the State terminate. The State shall give written notice to the Lessee of termination at the address hereinafter provided. The State reserves to itself and Lessee assigns to the State all rights to damages or awards because of such taking by eminent domain.

XXIV. No Waiver. The failure of the State to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect with regard to any violations thereof that had theretofore occurred.

XXV. No Warranty of Title. In executing this Lease, the State makes no claims or guarantees with respect to the title of the Premises herein Leased, and the Lessee specifically agrees that it shall in no way hold the State liable for any claims or damages for any interruption of its enjoyment or use of the Premises should any dispute to title arise during the course of this Lease.

XXVI. Granting Rights to Others. Nothing contained in this Lease shall be construed to prevent the State from granting any rights to or permitting any use of the Premises (but not the lighthouse) it might otherwise have authority to grant or permit, provided, however, that the State agrees that it will not grant any such right or permit such use if such right or use would prevent the use and enjoyment by the Lessee of the Premises or Lessee’s use and enjoyment of the Lighthouse, in accordance with all terms and conditions herein and as set forth in its acquisition of the Lighthouse from the federal government, without the approval of the Lessee which approval shall not be unreasonably withheld.

XXVII. Signage. Any signs placed on the Premises will be subject to prior written approval by the State and will be at the Lessee’s cost and expense.

XXVIII. Sovereign Immunity. The parties acknowledge and agree that nothing in the Lease shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Lease. To the extent that this Section conflicts with any other Section, this Section shall govern.

XXIX. Notices. Where written notice is required under this Lease, such notice shall be deemed sufficiently given if sent by certified mail, return receipt requested, to:

The State:

Commissioner
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106

The Lessee:

CEO title
Non-Profit/Company Name

_____, CT 06____

Provided that said addresses may be changed at any time by written notification by either party, sent as above.

- XXX. Intentionally Omitted.**
- XXXI. No Exclusive Remedies.** No right, power, remedy or privilege of the State shall be construed as being exhausted or discharged by the exercise thereof in one or more instances, and it is agreed that each and all of said rights, powers, remedies or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to the State at law or in equity.
- XXXII. Entire Agreement.** Subject to the provisions of the Section entitled "Conditions Precedent," this Lease and all of the schedules and exhibits attached hereto together constitute the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, and/or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in writing signed by both parties hereto.
- XXXIII. Conditions Precedent.** This Lease shall not be effective unless it is approved by the Secretary of the Office of Policy and Management and the Attorney General of the State of Connecticut.
- XXXIV. Severability.** If any part of any provision of this Lease or any other agreement, document or writing given pursuant to or in connection with this Lease shall be declared to be invalid or unenforceable under Applicable Law by a court or agency having jurisdiction over the subject of any dispute, said part shall be ineffective to the extent of such invalidity only, and the remaining terms and conditions shall be interpreted in such a manner so as to give the greatest possible effect of the original intent and purpose of the Lease.
- XXXV. No Derogation of Police Powers.** Nothing in this Lease shall be in derogation of the valid exercise of the police powers of the State of Connecticut.
- XXXVI. Claims Against the State.** The Lessee agrees that the sole and exclusive means for the presentation of any claim against the State arising from or in connection with this Lease shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims against the State) and the Lessee further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.
- XXXVII. Forum and Choice of Law.** The parties deem the Lease to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Lease to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Lessee waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

XXXVIII. Access to Lease and State Data. The Lessee shall provide to the State access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning the Lease and the State that are in the possession or control of the Lessee upon demand and shall provide the data to the State in a format prescribed by the State and the State Auditors of Public Accounts at no additional cost.

XXXIX. Large State Contract Representation for Lessee. Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Lessee, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

(a) That no gifts were made by (A) the Lessee, (B) any principals and key personnel of the Lessee, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Lessee or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi-public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;

(b) That no such principals and key personnel of the Lessee, or agent of the Lessee or of such principals and key personnel, knows of any action by the Lessee to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Lessee to provide a gift to any such public official or State employee; and

(c) That the Lessee is submitting bids or proposals without fraud or collusion with any person.

XL. Large State Contract Representation for Official or Employee of State Agency. Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State agency official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

XLI. Authority. The Lessee represents and warrants to the State that:

(a) it is a duly and validly existing _____ under the laws of the State of _____ and is authorized to conduct its business in the State of Connecticut in the manner contemplated by the Lease;

(b) the Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and has the power and authority to execute, deliver and perform its obligations under this Lease;

(c) the Lessee has full right and authority to enter into this Lease for the full term herein granted;

(d) the Lessee will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Lease;

(e) the execution, delivery and performance of this Lease by the Lessee will not violate, be in conflict with, result in a breach of or constitute (with or without

due notice and/or lapse of time) a default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or any governmental department, commission, board, bureau, agency, office, council, institution or instrumentality; or (iii) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound; and

- (f) to the extent that the Lessee has engaged the services of any person or entity in any capacity to solicit or secure this Lease, the Lessee shall be solely responsible for the payment of any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Lease or any assignments made in accordance with the terms of this Lease. The State shall not be responsible under any circumstances for the satisfaction of such consideration.

